

John V. Picone III, Bar No. 187226
jpicone@hopkinscarley.com
Jeffrey M. Ratinoff, Bar No. 197241
jratinoff@hopkinscarley.com
HOPKINS & CARLEY
A Law Corporation
The Letitia Building
70 South First Street
San Jose, CA 95113-2406

mailing address:

P.O. Box 1469
San Jose, CA 95109-1469
Telephone: (408) 286-9800
Facsimile: (408) 998-4790

Attorneys for Plaintiffs
NEO4J, INC. and NEO4J SWEDEN AB

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation, and
NEO4J SWEDEN AB, a Swedish
corporation,

Plaintiffs,

v.

GRAPH FOUNDATION, INC., an Ohio
corporation, GRAPHGRID, INC., an Ohio
corporation, and ATOMRAIN INC., a
Nevada corporation,

Defendants.

CASE NO. 5:19-cv-06226-EJD

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF PLAINTIFFS'
CONSOLIDATED OPPOSITION TO
DEFENDANTS' MOTIONS TO DISMISS
THE FIRST AMENDED COMPLAINT**

Date: October 29, 2020
Time: 9:00 a.m.
Dept.: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

JURY TRIAL DEMANDED

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 Plaintiffs Neo4j, Inc. and Neo4j Sweden AB (collectively “Plaintiffs”) hereby submit this
3 Request for Judicial Notice in Support of its Motion to Strike Defendant’s Second Amended
4 Answer. The matters subject to this Notice are attached as Exhibits A through D to the Declaration
5 of Jeffrey M. Ratinoff (the “Ratinoff Declaration”) in support of Neo4j USA’s Motion to Strike.

6 Pursuant to Rule 201(b) of the Federal Rules of Evidence, courts may take judicial notice
7 of adjudicative facts that are “not subject to reasonable dispute.” Fed. R. Evid. 201(b). Facts are
8 indisputable only if they are either “generally known” or “capable of accurate and ready
9 determination by resort to sources whose accuracy cannot be reasonably questioned.” *Id.* In ruling
10 on a motion to dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may
11 consider documents that are attached to the challenged pleading or incorporated by reference when
12 their authenticity is not contested, or are otherwise properly the subject to judicial notice. *See*
13 *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 US 308, 322, 127 S.Ct. 2499 (2007) (court ruling
14 on motion to dismiss must consider entire complaint and other sources incorporated by reference
15 as well as judicially noticeable matters).

16 Given the centrality of each document identified below to the allegations in Plaintiffs’ First
17 Amended Complaint (“FAC”), and given that each exhibit to the Ratinoff Declaration’s
18 authenticity is not subject to reasonable dispute, judicial notice is proper under applicable law.
19 Neo4j USA respectfully submits this Request for Judicial Notice for the following documents:

20 1. Neo4j Sweden AB’s version of the GNU Affero General Public License (“AGPL”)
21 downloaded from Neo4j Sweden AB’s GitHub, which is attached as **Exhibit A** to the Ratinoff
22 Declaration. This license is referenced in Paragraphs 30 and 31 of the FAC and its authenticity is
23 undisputed. As a result, it may be incorporated therein by reference. *See Parrino v. FHP, Inc.*, 146
24 F.3d 699, 703 (9th Cir.1998), as amended (July 28, 1998) (a motion to dismiss may consider a
25 document whose contents are alleged in the complaint and whose authenticity is undisputed but

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1 which is not physically attached to complaint); *see also Khoja v. Orexigen Therapeutics, Inc.*, 899
 2 F.3d 988, 998 (9th Cir. 2018) (holding even if a document is not attached to a complaint, it may be
 3 incorporated by reference into a complaint if the plaintiff refers extensively to the document or the
 4 document forms the basis of the plaintiff's claim).

5 2. The Neo4j Sweden Software License attached as **Exhibit B** to the Ratinoff
 6 Declaration. This license is referenced in Paragraph 32 of the First Amended Complaint and its
 7 authenticity is undisputed. The Neo4j Sweden Software License forms the basis of Plaintiffs'
 8 breach of license agreement and DMCA claims. As a result, it may be incorporated therein by
 9 reference. *See Parrino*, 146 F.3d at 703; *see also Khoja*, 899 F.3d at 998.

10 3. Neo4j Sweden AB's current version of the GNU General Public License, which is
 11 attached as **Exhibit C** to the Ratinoff Declaration. This license is referenced in Paragraph 33 of
 12 the First Amended Complaint. As a result, it may be incorporated therein by reference. *See*
 13 *Parrino*, 146 F.3d at 703; *see also Khoja*, 899 F.3d at 998.

14 4. The LICENSE.txt file used by Graph Foundation Inc. for its ONgDB software,
 15 which is attached as **Exhibit D** to the Ratinoff Declaration. This license is referenced in Paragraphs
 16 67-69 of the FAC, is a non-redlined version of LICENSE.txt file contained in Exhibit 36 to the
 17 FAC, and forms the basis of Plaintiffs' breach of license agreement and DMCA claims. As a result,
 18 it may be incorporated therein by reference. *See Parrino*, 146 F.3d at 703; *see also Khoja*, 899
 19 F.3d at 998.

20 Dated: September 21, 2020

HOPKINS & CARLEY
 A Law Corporation

22 By: /s/ Jeffrey M. Ratinoff

23 Jeffrey M. Ratinoff
 24 Attorneys for Plaintiffs
 NEO4J, INC. and NEO4J SWEDEN AB